

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1146 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

VASANTBEN MANHARLAL RANA

Appearance:

Shri S.R. Divetia, Addl. Public Prosecutor, for
the Appellant-State

Shri N.S. Desai, Advocate, for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/01/97

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Khambhat on 31st July 1995 in Criminal Case No. 1422 of 1993 is under challenge in this appeal at the instance of the

State Government by leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate has acquitted the respondents-accused of the offences punishable under sec. 454, 380 and 114 of the Indian Penal Code, 1860 (the IPC for brief).

2. The facts giving rise to this appeal move in a narrow compass. The original complainant lodged the complaint against the respondents-accused with respect to theft of her golden and silver ornaments worth Rs. 55,500. The police thereupon investigated into the matter. On conclusion of the investigation, the necessary charge-sheet was submitted in the Court of the Judicial Magistrate (First Class) at Khambhat charging the respondents-accused of the offences punishable under sec. 454, 380 and 114 of the IPC. It came to be registered as Criminal Case No. 1422 of 1993. The charge against the accused was framed at Ex. 3. Neither accused pleaded guilty to the charge. Thereupon they were tried. After recording the prosecution evidence and after hearing arguments, by his judgment and order passed on 31st July 1995 in Criminal Case No. 1422 of 1993, the learned trial Magistrate acquitted the respondents-accused of the charge levelled against them. It may be noted that the learned trial Magistrate did not think it fit to record any further statement of either of the respondents-accused after recording the prosecution evidence. The State Government was aggrieved by the judgment and order of acquittal passed by the learned trial Magistrate. It has therefore approached this Court by means of this appeal under sec. 378 of the Cr.P.C. after obtaining its leave.

3. Learned Additional Public Prosecutor Shri Divetia for the appellant-State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was not justified in acquitting the respondents-accused of the charge levelled against them. According to learned Additional Public Prosecutor Shri Divetia, the learned trial Magistrate ought to have come to the conclusion that the prosecution could prove its case against the respondents-accused beyond any reasonable doubt. As against this, learned Advocate Shri Desai for the respondents-accused has submitted that the learned trial Magistrate has carefully scanned and scrutinized the evidence on record and has come to the conclusion that the respondents-accused have not been found in any way connected with the loss of the so-called ornaments by or on behalf of the complainant. According to learned Advocate Shri Desai for the

respondents-accused, the view taken by the learned trial Magistrate is the only possible view and no interference with the impugned judgment and order passed by the learned trial Magistrate is called for in this appeal.

4. One important fact to be noted in this case is belated filing of the complaint by the original complainant. The complaint was filed nearly one month after the loss of the so-called ornaments by the complainant. The basis of the complaint was also suspicion arising on account of some photograph of marriage wherein respondent-accused No.2 was found wearing some ornaments. It is obvious that in photographs even imitation jewellery might look genuine and real. It thus appears that the suspicion was based on a wrong foundation.

5. It appears that some ornaments were produced from the house of the respondents-accused and seized under the panchnama at Ex. 14. It transpires therefrom that the articles recovered from their house were articles of imitation jewellery and not genuine or real ones. It transpires from the panchnama at Ex. 14 that the articles were not muddamal articles. In that view of the matter, it would be difficult to connect the respondents-accused with the loss of the ornaments in question from the house of the original complainant.

6. In fact, the complainant has stated in her oral testimony that she might have lost her ornaments while she was going to Jaipur. It is possible that the theft had taken place during her journey to Jaipur. It is nobody's case that the respondents-accused were or either of them was accompanying the complainant at the relevant time.

7. It transpires from the impugned judgment and order of acquittal passed by the learned trial Magistrate that all these factors have been taken into consideration for coming to the conclusion that there was no material on record for connecting the respondents-accused in any manner with the alleged crime. In that view of the matter, the view taken by the learned trial Magistrate is the only possible view on the basis of the material on record. It calls for no interference by this Court in this appeal.

8. In the result, this appeal fails. It is hereby dismissed.
